

Sir:

Please take notice that the within is a true
copy of an _____
this day duly filed and entered in the office of
the Clerk of _____

in this action.

Dated N. Y., _____ 189

Yours, etc.,

PERCIVAL S. JONES,

Att'y for _____

To _____

Esq.,

Att'y for _____

New York County
Supreme Court.

38
National Gramophone Corporation

Plaintiff

against
American Talking Machine Company

Defendant

Affidavits

&

Notice of Motion.

Jones & McCormick
PERCIVAL S. JONES,

Attorney for Deft.

220 BROADWAY,

NEW YORK CITY.

Borough of Manhattan.

Due service of a copy of within
copy of notice and indorsed notice of
entry hereby admitted. of Motion Admitted

Dated, N. Y., _____ 189

Att'y.

To _____

Esq.

Att'y.

FILED
JAN 19 1900
Record Jan 6th 1900

-----X

NATIONAL GRAMOPHONE CORPORATION,

-against-

AMERICAN TALKING MACHINE COMPANY.

-----X

City and County of New York, S.s.:

Albert T. Armstrong, being duly sworn, deposes and says:
that he resides at No. 110 East 17th Street, in the Borough
2 of Manhattan, City of New York. That he is the manager and
sales-agent for the defendant mentioned in the verified com-
plaint in this action, having entire charge of the busi-
ness of the defendant and an office and salesroom at 106
Wall Street in the city of New York.

That this action was commenced by the service of a
summons and verified complaint on this deponent on the 12th
day of December 1899, and that the defendant's time to plead
demur or otherwise move herein was extended once by stipu-
lation for twenty (20) days.

3 That the defendant has appeared herein by Jones & McCor-
mick, attorneys, of No. 220 Broadway, Borough of Manhattan,
but has not yet answered the complaint. That the plain-
tiff's attorney is Waldo G. Morse Esq., of No. 10 Wall St.,
in the City of New York.

That said action was brought to recover the sum of
Twenty-five Thousand (\$25,000) Dollars damages for an al-
leged libel mentioned in said complaint, in that it is aver-
red that the defendant maliciously and voluntarily caused

4

to be published and distributed among such dealers and customers of the plaintiff, especially the firm of W. H. Hamblen, one of said dealers in the city of New York, his agents and employees, a certain communication which is set forth more particularly in the complaint herein, which the said plaintiff alleges to be false and libelous. And likewise avers that the facts contained in said statements injured the reputation, good name, business and credit of the plaintiff, and by reason whereof customers of the plaintiff declined and refused to purchase and pay for their said goods and wares, and was unable to sell and dispose of the same to such customers to its damage Twenty-five Thousand (\$25,000) Dollars.

5

That defendant intends in good faith to defend this action and that deponent is entirely ignorant of the particulars of the claim of said damages alleged in said complaint, and what particular persons, firms and corporations, customers of the plaintiff, declined and refused to purchase and pay for its said goods and wares, and to what particular persons, firms and corporations it became and was unable to sell and dispose of the same, to its damage Twenty-five Thousand (\$25,000) Dollars.

6

That it is necessary and material to the defence herein and to enable the defendant to answer, that the plaintiff shall be required to ~~answer~~ ^{render} a bill of particulars wherein is set out the names of divers persons, firms and corporations to whom the said plaintiff was not able to make sales, as alleged in said complaint, as the deponent is

advised by Henry J. McCormick of counsel for the defendant,
of No. 220 Broadway, in the Borough of Manhattan, and verily
believes.

7 That no previous application for a bill of particulars
or for an order that the plaintiff be required to render a
bill of particulars has been made. And that neither said
defendant nor this deponent has any facilities whatever for
obtaining the information herein sought.

Sworn to before me this

5th day of January, 1900.

: Albert J. Armstrong

A. R. Goldstone,
Notary Public,
N.Y.C.

-----X
NATIONAL GRAMOPHONE CORPORATION,

-against-

AMERICAN TALKING MACHINE COMPANY.
-----X

City and county of New York. S.s.:

Henry J. McCormick, being duly sworn, deposes and says
That he is an attorney and counsellor at law residing in
2 the Borough of Manhattan and is a member of the firm of
Jones & McCormick, defendant's attorneys herein, having an
office at No. 220 Broadway in the city of New York.

That he is acquainted with Albert T. Armstrong, whose
affidavit is hereunto annexed, the manager and sales-agent
of the defendant above named. That both the plaintiff and
the defendant are engaged in the manufacture and sale of
patented articles known as "gramophones" and "vitaphones"
and other talking machines.

3 That the said Albert T. Armstrong has fully and fairly
stated the case of this defendant to this deponent and from
the statement of the case in the action made to him by the
said Albert T. Armstrong verily believes that the defendant
has a good and substantial defence upon the merits, to the
cause of action set forth in the complaint or to some part
thereof.

That this deponent has examined the complaint herein
and the action therein laid is one for damages for libel,
wherein is set forth special injury and special damage in
that by reason of the alleged publication of the libelous

4 matter, as set forth in said complaint, plaintiff has been injured in its reputation, good name, business and credit, and likewise and in like manner by reason of the premises, various customers of the plaintiff declined and refused to purchase or pay for its said goods and wares and it became and was unable to sell and dispose of the same to said customers, to its damage Twenty-five Thousand (\$25,000) Dollars.

5 That from the nature of said action and by reason of the foregoing premises the said defendant will be absolutely unable to form a proper answer and prepare its defence unless a bill of particulars, stating the names and addresses of such persons, firms and corporations, customers of said plaintiff, who refused to purchase from the said plaintiff and whose custom has been lost through the defendant by the plaintiff, with the dates and amounts of any transactions, the benefit of which plaintiff has likewise lost through the alleged libel.

6 WHEREFORE defendant asks for an order requiring the said plaintiff to set forth in a bill of particulars, verified by affidavit, as to the matters herein set forth.

Sworn to before me this

5 day of January 1900.

Henry J. McCormick

David K. Case

-----X
NATIONAL GRAMOPHONE CORPORATION,

-against-

AMERICAN TALKING MACHINE COMPANY.
-----X

S I R:-

2 PLEASE TAKE NOTICE that upon the summons and complaint herein, the defendant's notice of appearance, and upon the moving affidavits hereunto annexed of Albert T. Armstrong, verified January 5th 1900, and of Henry J. McCormick, verified January 5th 1900, a motion will be made at a Special Term of the Supreme Court to be held at the County Court House in the City of New York, Part I thereof, on the 15th day of January 1900, at 10.30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for a rule or order of this Court requiring the said plaintiff to file and serve a bill of particulars verified by affidavit, specifying all and singular, cancelled contracts made with the plaintiff, with the names of the parties thereto, their addresses, and whether they be persons, firms or corporations, together with the names of all persons, firms and corporations, with their places of business, whose custom has been lost through said alleged libelous publication, and further specifying every person and firm to whom he intends to prove the alleged libelous statement was published, and giving the names of the towns or cities in which said persons respectfully reside or have

3

-2-

4 places of business, together with such other and further
relief in the premises as may be just and proper, besides
the costs of this motion.

Yours &c.,

Jones & McCormick,
Office & Post Office Address,
No. 220 Broadway, New York City,
Borough of Manhattan.

To Waldo G. Morse Esq.,

Attorney for Plaintiff.